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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 230217-0045]

RIN 0648-BL84

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Harvest Levels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management Council (Council). If implemented, this proposed rule would revise the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs) for red snapper in the Gulf exclusive economic zone (EEZ). The purpose of this proposed rule is to increase the Gulf red snapper ACLs and ACTs consistent with best scientific

information available, and to continue to achieve optimum yield (OY) for the stock.

DATES: Written comments must be received on or before
**[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER].**

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2022-0123" by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter "NOAA-NMFS-2022-0123", in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Dan Luers, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential

business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at

<https://www.fisheries.noaa.gov/action/modification-catch-limits-gulf-mexico-red-snapper>.

FOR FURTHER INFORMATION CONTACT: Dan Luers, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: *daniel.luers@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act).

Unless otherwise noted, all weights in this proposed rule are in round weight.

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and to achieve, on a continuing basis, the OY from federally managed fish stocks to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

Red snapper in the Gulf EEZ is harvested by both the commercial and recreational sectors. The stock ACL for red snapper is equal to the acceptable biological catch (ABC) recommended by the Council's Scientific and Statistical Committee (SSC), and each sector has its own ACL and associated management measures. The stock ACL is allocated 51 percent to the commercial sector and 49 percent to the recreational sector. In 2015, Amendment 40 to the FMP (80 FR 22422, April 22, 2015) divided the recreational ACL (quota) between the Federal charter vessel/headboat (for-hire) component (42.3 percent) and the private angling component (57.7 percent).

In 2020, NMFS implemented state management of red snapper for the private angling component as specified in Amendments 50 A-F to the FMP (85 FR 6819, February 6, 2020). Through these amendments, each Gulf state was

allocated a portion of the red snapper private angling component ACL and was delegated the authority to set the private angling fishing season, bag limit, and size limit. However, each Gulf state was managing the harvest by its private anglers using estimates from its own state data collection program, which, except for Texas, was not directly comparable to the state's ACL. To address this issue, the Council, Gulf states, and NMFS worked to develop and implement calibration ratios that adjusted each state's private angling component ACL so that it could be directly compared to the landings estimates produced by that state's data collection program. (87 FR 74014, December 2, 2022).

In 2016, Congress awarded funding to researchers in an effort to independently estimate the population size of red snapper in the Gulf. Commonly known as the "Great Red Snapper Count" (GRSC), this project's primary goal was to provide a snapshot estimate of abundance and distribution of age 2 and older red snapper on artificial, natural, and uncharacterized bottom habitat across the northern Gulf through 2019.

The results of the GRSC and catch projections produced by the NMFS Southeast Fisheries Science Center (SEFSC) using the GRSC estimates of red snapper abundance were made available to the Council's SSC in 2021. The SSC expressed

some concerns about using the GRSC findings to recommend catch levels. Specifically, the SSC noted the uncertainty associated with the GRSC biomass estimate, questions about the productivity of the red snapper stock that are raised by the GRSC findings (that the productivity of the stock appears to be lower than previously assumed), and the declining trend observed in the longstanding NMFS Bottom Longline (BLL) survey. Based on these concerns, and until additional information could be presented related to the SSC's questions about some aspects of the GRSC, the SSC determined that it was not appropriate to use the GRSC-based projections to recommend a new ABC, which constrains the total allowable catch that may be specified by the Council. Instead, the SSC used the GRSC-based projections to recommend a new OFL of 25,600,000 lb (11,611,965 kg) but used projections generated using information from the NMFS BLL survey to recommend a new ABC of 14,400,000 lb (6,531,730 kg). The Council adopted these recommendations and specified new commercial and recreational catch limits using the established allocations. These new catch limits were effective on January 1, 2023 (87 FR 74014, December 2, 2022).

At its March 2022 meeting, the Council's SSC reviewed new catch level projections based on an SEFSC analysis that

used updated GRSC abundance data for Florida and included an independent study that provided an estimate of red snapper abundance for Louisiana. A detailed explanation of the information reviewed by the SSC is available in the framework action. In summary, the SSC determined that the SEFSC projections informed by the GRSC abundance data for Texas, Alabama, Mississippi, the updated abundance data for Florida, and new abundance data for Louisiana are based on the best scientific information available and should be used for new OFL and ABC recommendations. Therefore, the SSC recommended a new OFL of 18,910,000 lb (8,577,432 kg) and a new ABC of 16,310,000 lb (7,398,092 kg), which is reduced from the OFL based on 30 percent probability of overfishing. The SSC recommended a decrease in the OFL because the total estimate of red snapper (over the age of 2) abundance was reduced from 118 million fish to 85.6 million fish. The SSC recommended an increase in the ABC because the decrease in the scientific uncertainty in the new abundance estimates allowed for a smaller buffer between the OFL and ABC.

Consistent with the Council's practice of setting the red snapper stock ACL equal to the ABC, the SSC's recommendation would result in the red snapper stock ACL increasing from 15,400,000 lb (7,000,000 kg) to 16,310,000

lb (7,400,000 kg). The Council approved the framework action to revise the red snapper harvest limits at its August 2022 meeting.

Management Measures Contained in this Proposed Rule

The framework action and this proposed rule would revise the red snapper OFL and ABC as recommended by the Council's SSC and increase the red snapper commercial and recreational ACLs and ACTs.

The commercial ACL (commercial quota) would increase from 7,854,000 lb (3,562,514 kg) to 8,318,100 lb (3,773,026 kg), and the recreational ACL (recreational quota) would increase from 7,546,000 lb (3,422,808 kg) to 7,991,900 lb (3,625,065 kg). This proposed rule would also increase the Federal for-hire component ACL from 3,191,958 lb (1,447,848 kg) to 3,380,574 lb (1,533,403 kg) and increase the Federal for-hire component ACT from 2,904,682 lb (1,317,542 kg) to 3,076,322 lb (1,395,396 kg). In addition, this proposed rule would increase the private angling component ACL from 4,354,042 lb (1,974,960 kg) to 4,611,326 lb (2,091,662 kg) and increase the private angling component ACT from 3,483,234 lb (1,579,968 kg) to 3,689,061 lb (1,673,330 kg).

This proposed rule would increase the state specific private angling component ACLs for each of the Gulf states. Each state's ACL listed below is consistent with the

allocation established in Amendment 50A and the state specific calibration ratio implemented in January 2023. Alabama's private angling component ACL would increase from 558,200 lb (253,195 kg) to 591,185 lb (268,157 kg). Florida's private angling component ACL would increase from 2,069,053 lb (938,507 kg) to 2,191,315 lb (993,964 kg). Louisiana's private angling component ACL would increase from 882,443 lb (400,269 kg) to 934,587 lb (423,922 kg). Mississippi's private angling component ACL would increase from 59,354 lb (26,923 kg) to 62,862 lb (28,514 kg). Finally, Texas's private angling component ACL would increase from 270,386 lb (122,645 kg) to 286,363 lb (129,892 kg).

Measure Contained in this Proposed Rule not in the Framework Action

In addition to modifying the Gulf red snapper harvest level as specified in the framework action, this proposed rule would revise language related to the red snapper Federal for-hire component quota (50 CFR 622.39(a)(2)(i)(B)) and the red snapper Federal for-hire component ACT (50 CFR 622.41(q)(2)(iii)(B)). Since 2015, when the recreational ACL (quota) was allocated between the Federal for-hire and private angling components, these provisions have specified that the Federal for-hire quota

and ACT apply "to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year." (84 FR 24832 May 1, 2015). This language was intended to prohibit persons with vessels issued Federal for-hire permits from transferring those permits off the vessels and then fishing for red snapper under the private-angling component catch limits during the same fishing year. To clarify this prohibition, NMFS added the following language in the final rule implementing Amendments 50A-F (85 FR 6819, February 6, 2020): "A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed." However, in that final rule, NMFS mistakenly referred to "the Gulf EEZ," which is inconsistent with the 2015 language because it improperly suggests that persons aboard these vessels could harvest red snapper from state waters when the for-hire component is closed and, thus, allow the type of activity that the prior sentence was intended to prohibit. This proposed rule would remove "EEZ" from that sentence in both 50 CFR 622.39(a)(2)(i)(B) and 50 CFR 622.41(q)(2)(iii)(B) to reflect that the harvest limitation applies to the

entire Gulf (Federal and state waters).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows. NMFS notes that this analysis has been updated since the final rule implementing the red snapper calibration and harvest level framework actions published on December 2, 2022, and which is effective on January 1, 2023 (87 FR 74014, December 2, 2022). The revised red snapper catch limits contained in that final rule will now serve as the no action alternative (status quo) in the updated factual

basis included for this proposed rule. The conclusions of the analysis have not changed.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble of this proposed rule. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule would apply to all federally-permitted commercial vessels, federally-permitted charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest red snapper in Federal waters of the Gulf. It would also apply to red snapper individual fishing quota (IFQ) shareholders within the commercial sector. It would not directly apply to federally-permitted dealers. Any change in the supply of red snapper available for purchase by dealers as a result of this proposed rule, and associated economic effects, would be an indirect effect of the proposed rule and would therefore fall outside the scope of the RFA. Although this rulemaking would apply to for-hire vessels, it would not be expected to have any direct effects on these entities. For-hire vessels sell fishing services to recreational anglers. The proposed changes to the red snapper management measures would not directly alter the services sold by these

vessels. Any change in demand for these fishing services, and associated economic effects, as a result of this proposed rule would be a consequence of behavioral change by anglers, secondary to any direct effect on anglers and, therefore, an indirect effect of this proposed rule. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA. Furthermore, for-hire captains and crew are not permitted to retain red snapper under the recreational bag limit, so only recreational anglers would be directly affected by the proposed changes to the red snapper recreational ACLs and ACTs. The RFA does not consider recreational anglers to be small entities, so they are outside the scope of this analysis (5 U.S.C. 603). Small entities include small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601(6) and 601(3)-(5)). Recreational anglers are not businesses, organizations, or governmental jurisdictions. In summary, only the impacts on commercial vessels and IFQ shareholders will be discussed.

As of July 8, 2021, there were 825 limited access valid or renewable commercial Gulf reef fish permits. In order to commercially harvest red snapper, a vessel permit must also be linked to an IFQ account and possess sufficient allocation for this species. IFQ accounts can be

opened and valid permits can be linked to IFQ accounts at any time during the year. Eligible vessels can receive red snapper allocation from other IFQ participants. On average from 2016 through 2020, there were 637 IFQ accounts that held red snapper allocation and 355 that held red snapper shares. During the same period, there were 438 federally permitted commercial vessels, on average each year, with reported landings of red snapper in the Gulf. Their average annual vessel-level gross revenue from all species for 2016 through 2020 was approximately \$146,000 (2021 dollars) and red snapper accounted for approximately half of this revenue. For commercial vessels that harvested Gulf red snapper, NMFS estimates that economic profits are approximately 34 percent of annual gross revenue, on average. The maximum annual revenue from all species reported by a single one of the commercial vessels that landed Gulf red snapper from 2016 through 2020 was approximately \$3.3 million (2021 dollars).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated,

is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All of the commercial fishing businesses directly regulated by this proposed rule are believed to be small entities based on the NMFS size standard. No other small entities that would be directly affected by this proposed rule have been identified.

This proposed rule would modify the red snapper OFL, ABC, ACLs, and recreational ACTs for 2022 and subsequent years based on the OFL and ABC recommendations of the Gulf Council's SSC. As stated previously, this updated analysis utilizes the revised red snapper catch limits from the final rule that published on December 2, 2022 (87 FR 74014) as the no action alternative (status quo), which differs from those that were in place at the time final action was taken by the Council on the framework action. Under this proposed rule, the commercial ACL (quota) would increase by 464,100 lb (210,512 kg), which if harvested in full, would correspond to an estimated increase in annual ex-vessel revenue of approximately \$2.28 million (2021 dollars). Divided by the average number of commercial vessels with reported landings of red snapper from 2016 through 2020, this would be an increase of approximately \$5,205 (2021

dollars) in gross revenue and \$1,770 in profits per vessel (4 percent of average annual gross revenue and profits). In addition to the expected increase in ex-vessel revenue, the proposed increase in the commercial red snapper quota would be expected to result in an annual increase in IFQ allocation value of approximately \$1.55 million (2021 dollars). Finally, total red snapper IFQ share value would be expected to increase by approximately \$16.15 million (2021 dollars). These estimates rely on average ex-vessel, IFQ allocation, and IFQ share price estimates from 2016 through 2020. Actual future prices could increase or decrease relative to this average because of market forces. NMFS expects that any negative price effects induced by this proposed rule, should they occur, would be outweighed by the benefits of the increased quota.

An additional item that is contained in the proposed rule that is not included in the framework action, are revisions to 50 CFR 622.41(q)(2)(iii)(B) and 50 CFR 622.39(a)(2)(i)(B), to remove the term "EEZ" from the following language, "A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed." The term

“EEZ” was inadvertently included in this language in the final rule implementing Amendments 50 A-F (85 FR 6819, February 6, 2020) and is inconsistent with the original language in those provisions that specify that Federal for-hire catch limits apply to vessels that have been issued the Federal for-hire permit at any time during the fishing year. This is an administrative change and is not expected to have any direct economic effects on any small entities. As such, this component of the proposed rule is outside the scope of the RFA.

In summary, the information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Annual catch limits, Fisheries, Fishing, Gulf, Red snapper, Reef fish, Quota.

Dated: February 17, 2023.

Samuel D. Rauch, III,

*Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 622 as follows:

**PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.23, revise paragraph (a)(1)(ii) to read as follows:

§ 622.23 State management of the red snapper recreational sector private angling component in the Gulf EEZ.

(a) * * *

(1) * * *

(ii) *State private angling component ACLs.* All ACLs specified below are in round weight and are consistent with monitoring under the respective state's reporting system. Equivalent ACLs, consistent with monitoring under the Federal reporting system, are provided, as applicable. If a state's delegation is suspended, as described in paragraph (a)(1) of this section, the Federal equivalent ACL, or for the Texas regional management area the ACL in paragraph (a)(1)(ii)(E) of this section, applies in the EEZ off that state.

(A) *Alabama regional management area* - 591,185 lb (268,157 kg); Federal equivalent - 1,212,687 lb (550,066 kg).

(B) *Florida regional management area* - 2,191,315 lb (993,964 kg); Federal equivalent - 2,066,889 lb (937,525 kg).

(C) *Louisiana regional management area* - 934,587 lb (423,922 kg); Federal equivalent - 881,686 lb (399,926 kg).

(D) *Mississippi regional management area* - 62,862 lb (28,514 kg); Federal equivalent - 163,702 lb (74,254 kg).

(E) *Texas regional management area* - 286,363 lb (129,892 kg).

* * * * *

3. In § 622.39, revise paragraphs (a)(1)(i) and

(a) (2) (i) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Commercial quota for red snapper - 8,318,100 lb
(3,773,027 kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper -*

(A) *Total recreational.* The total recreational quota
is 7,991,900 lb (3,625,065 kg), round weight.

(B) *Federal charter vessel/headboat component quota.*

The Federal charter vessel/headboat component quota applies
to vessels that have been issued a valid Federal charter
vessel/headboat permit for Gulf reef fish any time during
the fishing year. A person aboard a vessel that has been
issued a charter vessel/headboat permit for Gulf reef fish
any time during the fishing year may not harvest or possess
red snapper in or from the Gulf when the Federal charter
vessel/headboat component is closed. The Federal charter
vessel/headboat component quota is 3,380,574 lb (1,533,403
kg), round weight.

(C) *Private angling component quota.* The private

angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. The private angling component quota is 4,611,326 lb (2,091,662 kg), round weight.

* * * * *

4. In § 622.41, revise the paragraph (q) (2) (iii) (B) and the last sentence in (q) (2) (iii) (C) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(q) * * *

(2) * * *

(iii) * * *

(B) *Federal charter vessel/headboat component ACT.* The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. A person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf when the Federal charter vessel/headboat component is closed. The component ACT is 3,076,322 lb (1,395,396 kg), round weight.

(C) * * * The component ACT is 3,689,061 lb (1,673,330 kg), round weight.

[FR Doc. 2023-03834 Filed: 2/27/2023 8:45 am; Publication Date: 2/28/2023]